

IN THE MATTER OF
KARL HONKALA, LCADC

Respondent

License Number: LCA002

*** BEFORE THE**
*** STATE BOARD OF**
*** PROFESSIONAL COUNSELORS**
*** AND THERAPISTS**
*** Case Number: 2014-12**

*** * * * ***

FINAL DECISION AND ORDER OF PERMANENT REVOCATION

I. PROCEDURAL BACKGROUND

On or about February 24, 2014, the Board of Professional Counselors and Therapists (“the Board”) received a complaint alleging that the Respondent had engaged in sexual conduct with a client (“Client A”). The Board conducted an investigation into these issues, and, as a result of that investigation, on June 9, 2014, the Board summarily suspended the Respondent’s license to practice clinical alcohol and drug counseling pursuant to Md. Code Ann., State Gov’t § 10-226(c)(2)(i) (2009 Repl. Vol. & 2013 Supp.), concluding that the public health, safety or welfare imperatively required emergency action. The Board provided the Respondent with an opportunity to request a post-deprivation hearing on the Order of Summary Suspension. Respondent failed to request a post-deprivation hearing on the Summary Suspension. On June 30, 2014, the Board notified the Respondent of its intent to revoke his Clinical Alcohol and Drug license through the filing of a Notice of Intent to Revoke based upon charges that he violated the Maryland Professional Counselors and Therapists Act, specifically Md. Code Ann., Health Occ. (H.O.) § 17-511:

- (8) Violates the code of ethics adopted by the Board;
- (9) Knowingly violates any provision of this title;

- (13) Violates any rule or regulation adopted by the Board; and
- (16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy[.]

The Board also charged the Respondent's license with violations of the Board's regulations, specifically Md. Code Regs. 10.58.03 Code of Ethics:

.04A. A counselor shall:

- (11) Be familiar with and adhere to this chapter;
- (14) Take reasonable precautions to protect clients from physical or psychological trauma.

(B) A counselor may not :

- (3) Enter into relationships that could compromise a counselor's objectivity or create a conflict of interest.

.05A. Client Welfare and Rights

(2) A counselor may not:

- (a) Place or participate in placing clients in positions that may result in damaging the interests and the welfare of clients, employees, employers, or the public.

B. Dual Relationships

(1) A counselor shall:

- (a) Avoid dual relationships with clients;

.09A. A counselor may not engage in sexual misconduct with a client or supervisee. Sexual misconduct includes but is not limited to:

- (2) Sexual exploitation;
- (3) Sexual harassment;
- (4) Sexual behavior[.]

B. Concurrent Sexual Relationships. A counselor may not engage in either consensual or forced sexual behavior with:

- (1) A client;

The Respondent did not request an evidentiary hearing on the Summary Suspension, however, he did timely request an evidentiary hearing on the disciplinary charges under the Board's Practice Act. Subsequently, the Board notified the Respondent that it had scheduled an evidentiary hearing on the Board's Notice of Intent to Revoke for December 29, 2014. The Board sent its notice of hearing via regular and certified mail to the Respondent's last known address of record, pursuant to H.O. §17-511(b) and Md. Code Ann., State Gov't §10-207.

Pursuant to COMAR 10.58.04.04B and upon consent by both parties, the Board held an in-person pre-hearing conference (the "Conference") on February 12, 2015 at the Board's offices in Baltimore, Maryland. Assistant Attorney General Dawn Rubin, on behalf of the State of Maryland and James Farmer, Esquire, on behalf of the Respondent attended the Conference. The Conference was presided over by Carol Deel, PHD, LCPC, LCMFT, Chair of the Board. On February 18, 2015, a pre-hearing conference order was issued by the Board and sent to the parties via overnight postage on that same day. No objection to the pre-hearing conference order was filed by either party prior to the evidentiary hearing. The pre-hearing conference order is attached to this Order as Board's Exhibit 1.

On February 20, 2015 and March 20, 2015, a quorum of the Board was present and the evidentiary hearing was held. Dawn Rubin, Administrative Prosecutor, was present and presented the case on behalf of the State of Maryland. The Respondent was also present, represented by his counsel, James Farmer, Esq. Ms. Rubin presented the case on behalf of the State of Maryland, and Mr. Farmer presented the case on behalf of the Respondent.

Evidentiary Exhibits and Witnesses

State's Exhibits:

1. Order for Summary Suspension of License to Practice Clinical Alcohol and Drug Counseling, dated June 9, 2014
2. Notice of Intent to Revoke License to Practice Clinical Alcohol and Drug Counseling, dated June 30, 2014
3. Report of Investigation of Karl Honkala, LCADC with attached transcript of interview of Client A and addendum to report
4. License Verification Printout.
5. Complaint filed by DPP Agent, dated February 24, 2014
6. Complaint filed by Client A, dated February 24, 2014
7. Parole and Probation Records
8. Parole and Probation Drug Court treatment records.
9. Client A's billing and treatment records from Mr. Honkala.
10. Receipts received from Mr. Honkala for Client A's visits
11. Letter to Mr. Honkala from Tracey DeShields re: inquiry, dated January 30, 2014.
12. Letter to Mr. Honkala from Karen Wamsley re: subpoena request, dated April 16, 2014.
13. Letter to Mr. Slade re: subpoena request, dated May 8, 2014.
14. Photographs of gifts

State's Witnesses:

1. Investigator for the Board.
2. Respondent.

Respondent's Exhibits:

1. Insurance Notification.
2. Request for Ethical Opinion.

3. Client A's Counseling Evaluations.
4. Drug Test 10/14/13-Positive
5. Text Messages from Client A.
6. Report from Social Worker, dated August 19, 2014.
7. Letter of Recommendation, dated October 24, 2014.
8. Letter of Recommendation, dated October 27, 2014.
9. Letter from Karen McFann.
10. Letter of Recommendation, dated October 29, 2014.
11. Letter of Recommendation, dated November 3, 2014.
12. Report from Therapist, dated November 23, 2014.

Respondent's Witnesses:

1. Assistant State's Attorney for St. Mary's County
2. Character Witness.
3. Respondent.

II. PRELIMINARY ISSUES

Most of the facts of this case were not in controversy. Respondent filed a Motion to Suppress the investigative interview conducted on or about May 21, 2014. Prior to the hearing, the Board held a Pre-hearing conference with the parties on February 18, 2015. Subsequently, the Board issued a Pre-Hearing Conference order which *inter alia* the Board denied the Respondent's Motion to Suppress. Respondent also filed a Motion to Dismiss based on many of the same arguments laid out in Respondent's Motion to Suppress.

Respondent argued that the Board violated his Fifth Amendment right to due process by interviewing the Respondent during the investigatory phase of this case. However, a licensee has no constitutionally protected liberty interest at the investigative stage of board proceedings. Neither the due process clauses of the Fifth and Fourteenth Amendments nor the right to counsel in the Sixth Amendment afford any person the right to counsel in an administrative investigatory proceeding. See 73 C.J.S §81 Witnesses, *Humenansky v. Minnesota Bd. Of Medical Examiners*, 525 N.W.2d 559, 556 (Minn. 1994); *North Dakota Comm'n on Medical Competency v. Racek*, 527 N.W.2d 262, 266 (N.D. 1995); *Smith v. Board of Medical Quality Assurance*, 202 Cal.App.3d 316, 326, 248 Cal. Rptr. 704, 710 (1988); *Gilmore v. Composite State Bd. Of Medical Examiners*, 243 Ga. 415, 254 S.E.2d 365 (1979); *Setliff v. Memorial Hospital of Sheridan County*, 850 F.2d. 1384, 1395 (10th Cir. 1988). Due process considerations only arise when a board proceeding against a licensee moves from the investigatory state to the adjudicatory stage. *Hoover v. Smith*, 198 W.Va. 507, 482 S.W.2d 124 (1997). However, investigative activities do not implicate the due process clause, because an administrative investigation adjudicates no legal rights. *Id.*, 198 W.Wa. at 515, 482 Se.E. 2d at 132 (citing *Securities and Exchange Comm'n v. O'Brien*, 467 U.S. 735, 742, 104 S.Ct. 2720, 2725 (1984). See generally, *Weller v. Department of Social Serv's*, 901 F.2d. 387, 392 (4th Cir. 1990) (a person being investigated has no property or liberty interest in the investigative procedure.) See also *Unnamed Physician v. Comm'n on Medical Discipline*, 285 Md. 1, 14, *cert denied*, 444 U.S. 868 (1979) ("In the instant case the Commission proceedings had not reached a hearing stage requiring notice under Article 41, §251 of the Administrative Procedure Act...Here the Commission was exercising a quasi-legislative investigatory function where due process does not mandate a hearing.")

Furthermore, the Administrative Procedure Act (“APA”) does not provide for a right to counsel at the Investigative stage of the proceedings. Nor, does any statute or regulation governing the Board grant a right to counsel to individuals being interviewed during an investigation. A respondent, is, of course, entitled to appear with counsel in a contested case pursuant to the Maryland APA, Md. Code Ann., State Gov’t §10-201, *et seq.*

The Respondent also argues that he has an “absolute right against self-incrimination.” The Fifth Amendment exists, in part, to “assure that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action.” *Maness v. Meyers*, 419 U.S. 449, 461 (1975). However, this privilege may not be invoked on no more than the mere assertion by one claiming the privilege that information sought by the government may be incriminating. *United States v. Sharp*, 920 F.2d (4th Circ. 1990). In fact, the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them. *Baxter v. Palmigiano*, 425 U.S. 308 (1976). There is no evidence in the transcript that Respondent was coerced to answer any of the questions. Furthermore, there is no support for Respondent’s assertions in his Motion to Suppress and Motion to Dismiss that Respondent’s admissions made during the interview, regarding sexual contact with Client A, were incriminating in any sort of potential criminal investigation.

Respondent also states in his Motion to Suppress that the Board “recklessly” posted the statements made by Respondent during the interview on the Board’s public website. The Respondent is, most likely, referring to the Board’s Order for Summary Suspension. The Respondent was provided with an opportunity to show cause why the Board should not issue the Order for Summary Suspension, and failed to request a show cause hearing, or an evidentiary

hearing on the merits of the summary suspension, in order to dispute the findings by the Board. The Board has the authority to summarily suspend a therapist's license pursuant to Md. Code Ann., State Gov't § 10-2269(c)(2)(i) and is required to post the public Order pursuant to Md. Code Ann., Health Occ. § 1-607.

Respondent made several other arguments in his Motion to Dismiss, such as bias on the part of the Board, that have no basis in actual fact.

Consequently, the Board denied Respondent's Motion to Suppress, incorporates the Pre-Hearing Conference Order into this Final Order and denies Respondent's Motion to Dismiss.

III. FINDINGS OF FACT

The Board makes the following findings of fact based upon the entirety of the record:

1. On or about December 14, 1999, the Respondent obtained a license to practice as a clinical alcohol and drug counselor ("LCADC") in the State of Maryland, license number LCA002. (State's Exhibit 4.)
2. At the time of the incidents described herein, the Respondent practiced clinical alcohol and drug counseling in Mechanicsville, Maryland. At all times relevant, the Respondent was the owner and executive director of a private counseling practice.
3. On or about February 24, 2014, the Board received a complaint from a Senior Agent (identified as "Agent T") with the Maryland Department of Public Safety and Corrections ("MDPSC") alleging that the Respondent had engaged in sexual impropriety with a client ("Client A") who was on criminal probation for a drug related conviction. (State's Exhibit 5.)
4. On the same date, February 24, 2014, Client A filed a complaint with the Board alleging

she and the Respondent had engaged in sexual contact after she was unable to pay for her counseling services. (State's Exhibit 6.) Shortly thereafter, the Board initiated an investigation of the Respondent. (State's Exhibit, 3.)

5. Client A is a female who was convicted in June 2013 of burglary and drug possession. She was on supervised probation for her criminal offenses and reported to the MDPSC Office of Community Supervision three times weekly during the time of Respondent's misconduct. (State's Exhibit, 7.)

6. The Court ordered Client A to undergo an evaluation and treatment for substance abuse, and assigned the Respondent as her clinical drug and alcohol treatment counselor. The Respondent initially evaluated Client A on August 29, 2013 and her records reflect the Respondent treated her through February 3, 2014. (State's Exhibit, 8, 9.)

7. Between November 2013 and February 2014, Client A performed oral sex on the Respondent, at least, five times during Client A's therapy sessions. (State's Exhibit 2 and Transcript, p. 17, 59, 61).

DISCUSSION

Pursuant to section 17-509(16) of the Professional Counselors and Therapists' Practice Act ("the Practice Act"), the Board may reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the Board finds, by a preponderance of the evidence, that the licensee committed an act of immoral or unprofessional conduct in the practice of clinical or nonclinical therapy. *See* H.O. § 17-509(16).

By engaging in oral sex with a client, Client A, the Respondent committed an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or

therapy. In its discretion, the Board dismisses the charges that the client violated H.O. § 17-509(8), (9) and (13), as well as COMAR 10.58.03.04, .05 and .09.

The Board finds that the Respondent's violations of the Practice Act most appropriately fall within B(16) the Board's sanctioning guidelines. *See* COMAR 10.58.09.06B(16). The range of potential sanctions under COMAR 10.58.09.06B(16) includes reprimand to revocation and/or a minimum fine of \$100 to a maximum fine of \$5,000. Based upon the particular facts and circumstances of this case, the Board finds the Respondent's conduct by engaging in oral sex with his patient during therapy sessions to be plainly immoral and unprofessional conduct in the practice of clinical and nonclinical counseling or therapy. When a therapist engages in sexual conduct with a client, that therapist exploits the sacred trust the client places in the therapist. Furthermore, as noted by the Respondent's testimony, the Respondent repeated the same misconduct over and over again. (Transcript, p. 68).

Thus, in considering an appropriate sanction for the Respondent's license and certificate, the Board found his conduct to be so egregious as to warrant the revocation of his license to practice clinical alcohol and drug therapy in the State of Maryland. The Board finds that the Respondent's demonstrated disregard for professional conduct and patient safety, as well as Respondent's disregard for the statutes and regulations in place to ensure that safety, makes him unfit to practice as a licensed alcohol and drug therapist. Therefore, the Board finds that the Respondent has permanently lost the Board's and the public's confidence to maintain licensure as a licensed alcohol and drug therapist in the State of Maryland. No disciplinary sanction short of permanent revocation of the Respondent's license and certification can adequately protect the public.

IV. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes under Md. Code Ann., State Gov't § 10-226(c)(2) that the public health, safety, and welfare imperatively required emergency action in the form of the summary suspension of the Respondent's license to practice licensed alcohol and drug therapy as a licensed clinical alcohol and drug therapist on May 1, 2013.

In addition, based on the foregoing Findings of Fact, the Board concludes that the Respondent violated Md. Code Ann., Health Occ. § 17-509(16):

- (16) commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical therapy.

V. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that the Summary Suspension of the Respondent's license to practice as a licensed alcohol and drug therapist in the State of Maryland is hereby **AFFIRMED**; and it is further

ORDERED that the Respondent's license to practice as a licensed alcohol and drug therapist in the State of Maryland, license number LCA002, is hereby **PERMANENTLY REVOKED**; and it is further

ORDERED that the Maryland Board of Professional Counselors and Therapists will not accept or consider any applications for reinstatement of the Respondent's license to practice as a licensed alcohol and drug therapist in the State of Maryland at any time in the future; and it is further

ORDERED that this Order is a **PUBLIC DOCUMENT** under Md. Code Ann., State Gov't § 10-617(h) (2009 Repl. Vol.).

9/18/2015
Date



Carol Deel, Ph.D., LCMFT, LCPC

Board Chair, Maryland Board of Professional Counselors
and Therapists

NOTICE OF APPEAL RIGHTS

Any person aggrieved by a final decision of the Board under Md. Code Ann., Health Occ. §§ 17-509(16) may take a direct judicial appeal within thirty (30) days as provided by Md. Code Ann., Health Occ. § 17-512, Md. Code Ann., State Gov't § 10-222, and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").